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FTB NOTICE 98-9

April 30, 1998

SUBJECT: DRAFT REGULATION SYMPOSIUM—WEIGHT GIVEN TO THE SALES FACTOR IN THE APPORTIONMENT FORMULA. PROPOSED AMENDMENT OF 18 CAL. CODE REGS. SEC. 25128 AND ADDITION OF NEW REG. SEC. 25128-1 AND 25128-2

In FTB Notice 97-5, July 1, 1997, the staff of the Franchise Tax Board released discussion draft regulations dealing with the determination of when an apportioning trade or business must use a single-weighted sales factor instead of the double-weighted sales factor generally provided for in Revenue and Taxation Code section 25128. Section 25128(b) provides that an apportioning trade or business must use a single-weighted sales factor in its apportionment formula if it derives more than 50% of its gross business receipts from one or more qualified business activities. Included among qualified business activities for this purpose are agricultural and extractive business activities.

The purpose of discussion draft regulations 25128, 25128-1, and 25128-2, as proposed, is to provide guidance regarding: (1) the activities which constitute agricultural and extractive business activities within the scope of section 25128, (2) the effects on the classification of such business activity if the apportioning trade or business processes agricultural or extractive commodities into finished products, and (3) the effects of transferring agricultural and extractive commodities between members of a combined reporting group.

Discussion draft regulation 25128 contains general rules; regulation 25128-1 deals specifically with extractive business activity; and regulation 25128-2 deals specifically with agricultural business activity.

Although the department has received only one comment on the discussion draft regulations, the department believes that these draft regulations deal with matters of substantial public interest. Consequently, the department will hold a symposium to discuss the discussion draft regulations on June 11, 1998, in the Executive Conference Room at the Franchise Tax Board, 9645 Butterfield Way, Sacramento, CA, beginning at 10:00 a.m.

If the discussion draft regulations are officially noticed, symposium comments will be entered into the regulation record. Participants may comment without name attribution. A summary of the symposium will be made available to all participants, and will also be entered into the regulation record, if any. If you have any questions regarding the symposium, contact Ms. Beverly Moore at (916) 845-3354 (E-mail: bev_moore@ftb.ca.gov).

Drafting Information

The principal author of this notice is Donald L. Buxton of the Franchise Tax Board, Legal Branch. For further information regarding this notice, contact Mr. Buxton at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.